

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA, 11-cr-82-WMC

v. 13-cv-785-WMC

LARRY BUCKLEY,

Defendant.

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PETER OPPENEDER
CLERK US DIST COU
WD OF WI

NOTICE OF APPEAL AND
APPLICATION FOR CERTIFICATE OF
APPEALABILITY ("COA")
FED.R.APP.P. 22(b)

COMES NOW Petitioner, Larry Buckley Pro Se, and hereby files a Notice of Appeal and prays and respectfully moves this Honorable Court to issue a Certificate of Appealability ("COA"), pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure, based upon the following:

I. GROUNDS FOR APPLICATION

Petitioner has filed a motion pursuant to Rule 60(b)(6), seeking to alter or amend the Court's October 22, 2015, decision denying his motion to vacate under 28 U.S.C. 2255, on the issue of whether the district court abused its discretion when it denied the 2255 motion without allowing Petitioner an opportunity to amend the pleading pursuant to Federal Rules of Civil Procedure, Rule 15(a).

II. PROCEDURAL STATUS OF THE CASE

Petitioner respectfully submits that an application to the judges of the Court of Appeals for a COA is appropriate at this time because:

1. The district court entered a final, appealable judgment in this matter on October 11, 2018, that denied Petitioner relief;

2. Petitioner desires to appeal this judgment, as is authorized by Section 2253(a) of Title 28 of the United States Code. However, Section 2253(c)(1) and Appellate Rule 22(b)(1) require a certificate of appealability as a precondition of proceeding with the appeal;

3. The district court has not denied Certificate of Appealability;

4. In its "TEXT ORDER ONLY" denying the Rule 60(b)(6) motion, the district court has intimated "[s]ince he [Buckley] has not cited any reason why justice would require reconsideration of this court's conclusion, the motion is DENIED"; (EXHIBIT "A")

III. ARGUMENT IN SUPPORT OF "COA"

5. Petitioner has identified a basis for the district court to grant him relief, to wit: WHETHER THE DISTRICT COURT ABUSED ITS DISCRETION WHEN IT DENIED THE 2255 MOTION WITHOUT ALLOWING PETITIONER AN OPPORTUNITY TO AMEND THE PLEADING PURSUANT TO FED.R.CIV.P. 15(a);

6. Federal Rule of Civil Procedure, Rule 15(a) states that "[a] party may amend its pleading once as a matter of course within:

(A) 21 days after serving it, or
(B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier";

7. Since Rule 15(a) F.R.Civ.P. governs habeas petitions, and habeas petitioners, like any civil litigants, are entitled to amend their petitions, and the standards for granting or denying a motion to amend is governed by Rule 15(a), see, Walker v. United States, 306 F.Supp.2d 215 (N.D.N.Y. Feb. 11, 2004), Petitioner's showing is not only substantial, it is sufficient to merit further review by a Court of Appeals as reasonable jurists would find it "debatable whether the district court was correct in its procedural ruling," Slack v. McDaniel, 529 U.S. 473, 484 (2000);

IV. PETITIONER HAS SATISFIED ALL PROCEDURAL PREREQUISITES FOR A "COA"

8. Petitioner is seeking permission to appeal via COA from the district court on denial of his motion for relief from judgment from Rule 60(b)(6);

9. The district court has not denied COA when it denied the Rule 60(b)(6) motion;

V. CONCLUSION

WHEREFORE, for the reasons stated above, Petitioner Larry Buckley, respectfully prays and moves this Honorable Court to issue a COA so that he may proceed to the Court of Appeals on the issue set forth in this Application.

Done this 25th day of October, 2018.

Respectfully Submitted,

Larry Buckley

Larry Buckley-Pro Se

Reg. No. 07446-090

USP Atwater

P.O. Box 019001

Atwater, CA 95301



U.S. Department of Justice

Federal Bureau of Prisons

Office of the Warden

Atwater, California 95301

November 16, 2018

MEMORANDUM FOR ALL HSP INMATES

FROM: S. Lake, Warden

SUBJECT: Lockdown/Modified Operations - Update

Lockdown Update: As you know, the institution has been secured since October 24, 2018. On Monday, November 19, 2018, operations will be modified and inmates will be allowed out of their cells, but will remain in the units. On Monday, Unit Managers will be conducting Town Hall meetings in each unit and discussing important issues. Barring any security concerns, the institution will return to normal operations on Tuesday morning, November 20, 2018. The public website (www.bop.gov) will be updated indicating USP visiting will resume.

Emergency Announcement System: As a reminder, inmates must comply with the automated directions announced when the Emergency Announcement System is activated. The command is, "Stop, or I will shoot. All inmates lay face down on the ground." Inmates must follow this command. It is for your safety as well as for the safety of staff. Inmates refusing to comply will be subject to disciplinary action.

Stand-Up Counts: Remember, when a stand-up count is announced, inmates must be standing when staff count. Do not sit on the bunk, desk or anywhere else when the count is being conducted. Significant delays in count times are to be expected if staff are required to count an area more than once. Failure to stand for count is also a violation of the rules.

Living Quarters/Common Areas: When inmates keep their living quarters and common areas clean and organized, it improves the overall living conditions. Remember personal property and commissary items must fit in the lockers. As stated in the Admissions and Orientation (A&O) Handbook, "The amount of personal property allowed each inmate is limited to those items which can be neatly and safely stored in a locker. Under no circumstance will any materials be accumulated to the point where they become a fire, sanitation, security, or housekeeping hazard. Inmates are not allowed to display or affix

to any wall or locker nude, partially nude, or sexually suggestive photos or pictures, persons dressed in swim suits, lingerie, or undergarments." We will continue with our plan to install hooks in the cells, ensuring each cell is configured the same. An extra shelf will also be mounted in each locker allowing for easier property storage.

Prison Rules: Each inmate should be familiar with the institution rules and policies. Read the A&O Handbook and Unit Rules and Regulations. Institution rules create an orderly and safe environment for inmates and staff. I believe each inmate places great value on their family, and rightfully so. The best way to show your family you love them is to first consider their needs, not yours. Contact with your family and friends is beneficial to you, but more importantly to them. Don't jeopardize the privileges you have by breaking the rules.

Communication: My goal for all inmates and staff is for everyone to communicate effectively with each other. I understand inmates face a unique set of difficulties, especially with the diverse individuals and groups incarcerated. I understand being confined at this institution was not your choosing, or you may prefer to do your time somewhere else. Regardless of your circumstances, effective communication is key to your success in life. Treat each other with respect and dignity. Treat others as you would want to be treated.

CERTIFICATE OF SERVICE

I, Larry Buckley, hereby states pursuant to 28 U.S.C.1746 that a true and correct copy of "NOTICE OF APPEAL AND APPLICATION FOR CERTIFICATE OF APPEALABILITY" has been mailed via First Class U.S. Postage from the USP Atwater Mailroom, on this the 21st day of November, 2018, upon release from an "INSTITUTION LOCKDOWN", to: OFFICE OF THE CLERK, UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WISCONSIN (MADISON), 120 NORTH HENRY STREET, ROOM 320, MADISON, WISCONSIN 53703.

Respectfully Submitted,

Larry Buckley

Larry Buckley-Pro Se

Reg. No. 07446-090

USP Atwater

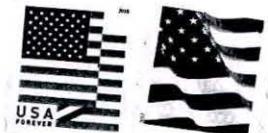
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PETER OPPENHEIM
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OFFICE OF THE CLERK
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120 NORTH HENRY STREET
ROOM 320
MADISON, WISCONSIN 53703

UNITED STATES PENITENTIARY, ATWATER
P.O. BOX 019000

NOV 28 2018

ATWATER, CA 95301 DATE

The enclosed letter was processed through special mailing procedures for forwarding to you. The letter has neither been opened nor inspected. If the writer raises a question or problem over which the facility has jurisdiction, you may wish to return the material for further information or clarification. If the writer encloses correspondence for forwarding to another addressee, please return the enclosure to the above address.